

REMARKS

Claim 1-8 remain pending in this application. Claims 1 and 4-8 have been amended to recite the wedge-shaped aspect of the invention in a different manner. No new matter has been added.

Claim 6 is rejected under 35 USC 112, first paragraph, due to lack of support for a lower component comprising a planar or substantially planar top slide surface. Claim 6 has been amended to correct this inadvertent drafting error by reciting that the upper component comprises a planar or substantially planar bottom slide surface. Accordingly, it is respectfully requested that the 35 USC 112 rejection be withdrawn.

Claims 1-3 and 5 are rejected under 35 USC 102(b) on Grundei (DE 101 23 124). Claims 4, 7 and 8 are rejected under 35 USC 103(a) on Grundei. These rejections are respectfully traversed with respect to the claims as amended.

Claim 1 recites an endoprosthesis for replacing an ankle joint. The endoprosthesis has a lower component, an upper component and an intermediate part. The lower component is configured to be connected to an ankle bone and forms a top slide surface. The upper component forms a bottom slide surface and has an upper connection surface configured for connection to a resection surface of a shin bone. The intermediate part has two slide surfaces interacting with the top and bottom slide surfaces of the upper and lower components.

Claim 1 has been amended to recite that either the upper component forms an angle greater than 1° in a frontal or sagittal section between its bottom slide surface and a horizontal plane relative to an upright orientation of the upper component or the intermediate part forms an angle greater than 1° in a sagittal section between its top slide surface and a horizontal plane relative to an upright orientation of the intermediate part. These aspects of the invention are neither disclosed nor suggested by Grundei.

Grundei discloses a prosthesis with a tibia part, removable plate part and a talus part. However, in contrast to the invention as recited in claim 1, the prosthesis of Grundei does not form an angle greater than 1° between the bottom slide surface of the tibia part and a horizontal plane relative to an upright orientation of tibia part, and does not form an angle greater than 1° between the top slide surface of the removable part and a horizontal plane relative to an upright orientation of removable part. Rather, as illustrated in FIGS. 1, 2, 4, 5 and 6 of Grundei, the bottom slide surface of the tibia part is parallel to the horizontal plane of the upright tibia part, and the top slide surface of the removable part is parallel to the horizontal plane of the upright removable part. Grundei provides no disclosure or suggestion of configuring these slide surfaces at any angle relative to the horizontal plane. Further, Grundei cannot avoid or alleviate an imbalance between anatomical or surgical circumstances and the prosthesis as described in the specification and achieved by the present invention.

Accordingly, because Grundei does not disclose or suggest all of the elements required by the claims, these rejections should be withdrawn.

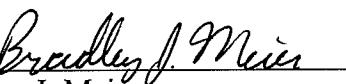
In view of the above, early action allowing claims 1-8 is solicited.

In the event the Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in

connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. **246472009200**.

Dated: July 27, 2009

Respectfully submitted,

By 
Bradley J. Meier
Registration No.: 44,236

Morrison & Foerster LLP
1650 Tysons Blvd, Suite 400
McLean, Virginia 22102
Telephone: (703) 760-7735
Facsimile: (703) 760-7777